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EXTRA LEAVE ANYONE?

We can see we've got your attention! The 2000 leave year is an odd one. Employees will accrue an additional 4, 6, or 8 hours of annual leave in the 2000 leave year,

Title 5, Code of Federal Regulations, defines "leave year" as the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year. This means that the 2000 leave year for most agencies (including the Department of Defense) began January 2, 2000 and will end January 13, 2001, creating 27 pay periods. Employees earn leave for each full biweekly pay period they are employed in a leave year. This means that employees may have an extra 4, 6 or 8 hours of "must leave" which may need to be scheduled this year. However, the 30-day maximum carryover of annual leave still applies. What's the message: Plan Ahead!

INSIDE THIS ISSUE

QUIZ TIME

In which of the following situations are you obligated to notify the union and allow them representation at the meeting?

1. You call a meeting of <u>all</u> your employees to:
   a. Notify them that all previously arranged work schedules will be discontinued.
   b. Discuss the status of work projects.
   c. Notify them that next week Supervisor Smith will replace you.
   d. Notify them that you will no longer "turn your back" to their reporting for work late.
   e. Discuss the new sexual harassment policy.

2. One of your employees stops you and wants to discuss the grievance he filed yesterday.

3. You are going to meet with <u>one</u> of your employees to:
   a. Notify her that on Monday she is to report to night shift.
   b. Deliver a disciplinary reprimand for unauthorized absence.
   c. Notify him that starting next week, new work hours for the Division will be Tuesday through Saturday, 0800-1630, with a 30-minute lunch break.

(See "Formal Meetings" article for answers)

New FLRA Chair

President Clinton has appointed Donald S. Wasserman as Chair of the Federal Labor Relations Authority. Mr. Wasserman, a member of the Authority since 1996, assumes the position of Chair that was recently vacated by Phyllis N. Segal.

Before joining the FLRA, Mr. Wasserman held many public service positions. He earned a B.S. from Temple University and a M.B.A. from the Wharton School at the University of Pennsylvania.

Reduction in Force Notice Period Changes – Or did it?

Effective February 1, 2000, the reduction in force notice period for DoD employees covered by 5 CFR 351 reverted back to 60 full days from the 120 full days formerly required. This is a result of the sunsetting of the statutory provision establishing the 120-day notice period (section 4433 of P.L. 102-484, as amended by section 341(a) of P.L. 103-337). See 5 CFR 351.801(a)(2).

Notices to employees issued on or after February 1, 2000, may be based on the shortened notice period. However, the sunsetting of the statutory provision does not override any collective bargaining agreement which provides for notice periods of greater than 60 days. Prior to moving to a shortened notice period, activities must fulfill any bargaining obligations. Also, activities may still opt to use the 120 day notice period.

Formal Meetings

Section 7114(a)(2)(A) of the Federal Service Labor Management Relations Statute provides that the union shall be given the opportunity to be represented at:

"any formal discussion between one or two representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general conditions of employment."

This is one of the most troublesome and difficult provisions in the Statue for supervisors and managers to administer. The language in the statue is exceptionally broad, and subject to a wide variety of interpretations. And that, unfortunately, provides for a lot of traps and pitfalls.

One of the easiest traps to fall into is that identified in situation 2 of this issue's quiz. It's tempting when an employee approaches you and wants to discuss a grievance to see if you can resolve it on the spot. But the law is very clear on this issue. Before you engage in any discussion with a unit employee about a grievance, the union is entitled to be given the opportunity to be present. And that is true regardless of who initiates the discussion, or whether or not the employee desires the union's presence at the meeting.

That's the clearest part of this provision of the Statue. From here on determining which meeting you hold with one or more of your employees is a "formal meeting" gets a little fuzzy. The following examples are provided for clarification.

Formal? Do I wear a tux?

Work status meetings (situation 1.b in the Quiz) are not formal discussions provided you confine the discussion to work status topics. But if you use that opportunity to throw in other topics (for example situation 1.e) you've just turned it into a formal discussion.

Situation 1.d is a formal discussion since you are discussing your personnel policy on tardiness. Further, if by turning your back on employee tardiness in the past, you have allowed tardiness to arise to a condition of employment, your efforts now to change that condition of employment triggers an obligation to notify the union in advance and upon request, negotiate that change.

Working overtime and shift work are accepted conditions of employment. Meetings to notify them of overtime assignments or shift changes (situation 3.a) are not formal discussions. However, changing an employee's basic workweek (situations 1.a & 3.c) constitutes a change in working conditions obligating you to notify the union in advance of the meeting.

Who an employee works for is not a condition of employment. Therefore, situation 1.c is not a formal discussion. And finally, situations 3.b is not a formal discussion since you are not discussing a personnel policy or practice, or a general condition of employment.

Confused? Don't feel bad. This is a subject over which even the most experienced labor relations practitioners cannot always agree. The Federal Labor Relations Authority who investigate alleged violations of this provision of the Statute analyze each situation on a case basis and even their interpretations seem sometimes contradictory.

The key is the application of this provision to the everyday work situation is common sense and good judgement. Communicating with your employees' representatives on changes affecting your employees will certainly help in keeping you from running afoul of this provision of the law.

Got an Article Idea?

You can contact us on email at nwlabor_nw@nw.hroc.navy.mil. We would enjoy hearing your ideas for our newsletter.

Weingarten

What is the Union's Role?

Our March-April 2000 newsletter covered "Weingarten" and your responsibilities as a supervisor. Here's a couple of questions/answers which explores the union's role in a Weingarten situation:

Question: To what extent must I, as the supervisor, allow the union representative to participate in the interview:

Answer: Believe it or not, the highest court in the land has answered that question. The Supreme Court said that:

a. The purpose of the union representative is to assist the employee by clarifying facts and bringing out favorable information.

b. The Employer (that's you – the supervisor) may insist on hearing the employee's account of the incident.

c. The Employer (yep, you) need not permit an argument to develop with the union representative.

d. The Employer (still you!) has no duty to bargain with the union representative.

Question: Does this mean that you can force the union to be quiet during the interview?

Answer: Absolutely not. Although you may insist that the employee, not the union representative, answer your questions, you must allow the union representative an opportunity to clarify facts or bring out favorable information.

Question: What do I do if the union representative becomes so argumentative as to completely disrupt the interview process?

Answer: Warn the union representative and employee that if the union representative continues to disrupt the meeting, you will be forced to end the interview and make your disciplinary decision on the basis of other information (without the benefit of the employee's input). If the disruption continues, discontinue the meeting and make your mind up based on the fact(s) at hand.

Why Investigate?

Prior to initiating any disciplinary action, supervisors need to conduct a thorough preaction investigation.

"Why," you ask, "I already know what he did." The answer is simple. The employee has a right to appeal. And if the employee does appeal, regardless of which appeal forum is used, management has the burden of proving that the employee was guilty of the infraction. The employee does not have to prove he was not guilty. The burden is on you to prove that he was. How do you do that? By putting more evidence of guilt before the Judge than he does of his innocence. The standard is called a "preponderance of evidence."

How do you get the evidence? By conducting a thorough investigation. As part of that investigation, you're going to gather that evidence.

How do you know what evidence you'll need? Call you HRO Advisor for assistance. They're skilled in such matters. That's what they get paid to do.

Once you've gotten the evidence, what do you do with it? Hang on to it. You're going to need to produce it at the appeal hearing which may be months, or in some cases, years away. And if you can't produce it, the disciplinary action you imposed will be reversed.

Neither a Democrat Nor Republican Be

Election years always bring out interesting cases involving the Hatch Act. As one of its duties, the Office of Special Counsel receives and investigates complaints of Hatch Act violations. When warranted, the OSC will prosecute violations before the Merit Systems Protection Board. When violations are not sufficiently egregious to warrant prosecution, the OSC may issue a warning letter to the employee involved.

The Merit Systems Protection Board recently upheld a request from the OSC to suspend a Postal Service employee who ran as a partisan candidate in a school board election, a violation of the Hatch Act. The OSC charged that the employee violated the Hatch Act when he cross-filed as both a Democratic and Republican candidate for school board director in Oxford, Penn. After running on both parties' tickets, the employee was elected school board director.

He resigned from the position after OSC begin prosecuting him for violating the Hatch Act, which provides that federal government and Postal Service employees may not be partisan candidates for elective office. The penalty for a proven violation of the Hatch Act is the employee's removal from employment or a penalty of not less than a 30-day suspension.

The employee conceded that he violated the Act, according to OSC. The OSC and MSPB then agreed that, given the facts of the case, a removal penalty was not warranted and that a 30-day suspension was appropriate.

According to OSC Special Counsel, the employee "learned the hard way that filing as both a Democratic and Republican candidate does not negate the Hatch Act's ban on partisan candidacy. With election season upon us, I would urge any employee who wants to be politically involved to seek advice from our office if they have concerns about what's permissible," Kaplan said.

The Hatch Act and what is permissible is covered on the OSC web site at www.osc.gov/hatchact.htm.

"While our office tries to prevent violations from ever occurring through the use of advisory opinions and educational programs, I do intend to aggressively enforce penalties under the Hatch Act when violations take place," Kaplan said. "Violators will be prosecuted."

Training Opportunities

Date	Class	Location
20-21June	Supervisor's Conference	Silverdale Hotel
10 July	Managing Employee's Time	HRSC
11 July	Overview of ADR	HRSC
12 July	Handling Medical problems	HRSC
13-14July	Handling Problem Employees	HRSC
24-27July	Introduction to Supervision	HRSC
5-8Sept	Supervisor's Role (formerly Managing the Maze)	HRSC
If interested, contact Code 30 at HRSC at 315-8143		